plaintiff's counsel to call and examine a material witness, not named the previous evening. *Held,* that such refusal was an abuse of judicial discretion and reversible error. *Campbell* v. *Campbell et al.* (1909), — R. I. —, 73 Atl. 354.

The general rule upon the point involved in the principal case is, that the trial court may in its discretion limit the number of witnesses who will be permitted to give evidence upon any point. *Delgado* v. *Gonzales,* 28 S. W. 459; *Larson* v. *Eau Claire,* 92 Wis. 86; *Minthon* v. *Lewis,* 78 Iowa 630; *Kesee* v. *R. Co.,* 30 Iowa 78; *Everett* v. *R. Co.,* 59 Iowa 243; *Gray* v. *St. John,* 35 Ill. 222; *Cushing* v. *Billings,* 56 Mass. (2 Cush.) 158; *Detroit City R. Co.* v. *Mills,* 85 Mich. 634. 3 ENCYC. EVID. 930-934; 4 Id. 680-681 and cases there cited. The following cases hold that an abuse of judicial discretion by the trial court in limiting the number of witnesses is reversible error. *Greene* v. *Phoenix Mutual Life Ins. Co.* 134 Ill. 315; *Hubble* v. *Osborn,* 31 Ind. 249; *Kash* v. *Miller,* 2 Bush (Ky.) 568; *Ward* v. *Washington Ins. Co.,* 19 N. Y. Super Ct. 229; *Galveston H. & S. A. R. Co.* v. *Matula,* 79 Tex. 577. With these cases the principal case is in accord. Some cases, however, deny the general power of the trial court to limit the number of witnesses, except where the fact to be proved is practically uncontroverted, or the issue collateral or unimportant. *Ward* v. *Dick,* 45 Conn. 235; *Reynolds* v. *Port Jarvis B. & S. Co.,* 32 Hun 64; *Union Nat'l Bank* v. *Baldenwick,* 45 Ill. 375; *Fenwick* v. *Boling,* 50 Mo. App. 516; *Barhyte* v. *Summers,* 68 Mich. 341; *Cooke Brewing Co.* v. *Ryan,* 98 Ill. App. 414; *Village of South Daneville* v. *Jacobs,* 42 Ill. App. 533. While in principle the rule would seem to be applicable to all classes of witnesses and to evidence upon any point whatever,—and it is so stated by WIGMORE (3 WIGMORE, EVID. § 1908, 3)— courts are in considerable conflict as to its proper application to particular classes of witnesses, or to evidence of particular facts. Some cases refuse to follow the general rule, where the issue was as to the value of property, or the damage thereto. *Covington* v. *Tafee,* 24 Ky. L. Rep. 378; *Kash* v. *Miller,* 2 Bush (Ky.) 568; *Barhyte* v. *Summers,* 68 Mich. 341. In still other cases, where the character of a party was in issue, courts have denied the power of the trial court to limit the number of witnesses as to that issue. *Ward* v. *Dick,* 45 Conn. 235; *Nelson* v. *Wallace,* 57 Mo. App. 397.

EXECUTORS AND ADMINISTRATORS—LIABILITY FOR FUNERAL EXPENSES.—Emma Skillman died, leaving considerable property. Her husband having been confined in an insane asylum for many years, his guardian paid the expenses of his wife's last sickness and funeral. Her husband having died since, his administrator now seeks to recover from her executor the amounts so paid. § 3165 of the Iowa Code makes family expenses chargeable upon the property of both husband and wife. § 3347 provides that "as soon as the executor or administrator is possessed of sufficient means over and above the expenses of administration, he shall pay off the charges of the last sickness and funeral of deceased * * * *." *Held,* § 3347 makes the estate of the wife primarily liable for the expenses of her last sickness and funeral and, therefore, the husband's guardian having paid them, and being only

secondarily liable, his administrator may recover the amount paid from the estate of the wife, (McCLAIN J. and DEEMER C. J., dissenting). *In re Skillman's Estate* and *Kelly* v. *Wilson,* (1910), — Iowa —, 125 N. W. 343.

The surviving husband was liable for the expenses of his wife's last sickness and funeral at common law. Such liability exists now without specific statutory provision. *Gould* v. *Moulahan,* 53 N. J. Eq. 341, 33 Atl. 483; *McClellan* v. *Filson,* 44 Ohio St. 184, 5 N. E. 861, 58 Am. Rep. 814; *Smyley* v. *Reese,* 53 Ala. 89, 25 Am. Rep. 598. His common law liability is not superseded by statutes enlarging the liability of the wife and her estate. *Vose* v. *Myott,* 141 Iowa 506, 120 N. W. 58, 21 L. R. A. (N. S.) 277. The result of making the wife liable is simply to create a double liability. When they are treated as family expenses, it is well settled that such charges paid by either husband or wife cannot be recovered from the other or from the other's estate. *Johnson* v. *Barnes,* 69 Iowa 641, 29. N. W. 759; *Courtright* v. *Courtright,* 58 Iowa 57, 4 N. W. 824; *McCartney* v. *Carter,* 129 Iowa 20, 105 N. W. 339, 3 L. R. A. (N. S.) 145. The majority opinion declares it to have been the intention of the legislature in § 3347 to make the estate of the wife primarily liable. They cite with approval the case of *Constantinides* v. *Walsh,* 146 Mass. 281, 15 N. E. 631, 4 Am. St. Rep. 311. It would seem, however, in view of the above well settled principles, as was pointed out by McCLAIN, J., in his dissenting opinion, that their intention might have been merely to prefer claims which may be presented for expenses of last sickness and funeral over claims for other debts.

GAS COMPANIES—RIGHT TO WITHDRAW FROM MUNICIPALITY.—The East Ohio Gas Company was incorporated for the purpose of producing, purchasing and acquiring natural gas and transporting the same to certain towns and cities named therein, one of which was the city of Akron. The Gas Company obtained consent from the city by ordinance to lay down its mains and pipes in the streets and alleys, the ordinance providing the rate to be charged for gas for ten years, but it was entirely silent as to the length of time during which the gas company might exercise the privilege granted. At the end of the ten years the council of the city established a rate which was not satisfactory to the company and the latter determined to discontinue business there. The city sought by injunction to restrain the company from shutting off or withholding any gas from those it had been serving. The court of common pleas granted a perpetual injunction and the circuit court on appeal made a similar order. Reversed. *East Ohio Gas Co.* v. *City of Akron,* (1909), — Oh. St. —, 90 N. E. 40.

There is nothing in the charter which will compel the company to operate in Akron. The privilege conferred is of producing and transporting gas to each or all of the places named or described and, if to any, then in the manner described. The city cannot compel the company to make gas or to suffer the gas which they do make to be used. *Norwich Gas Light Co.* v. *Norwich City Gas Co.,* 25 Conn. 19; for the distinction between a gas company and a bridge or ferry company see, *Charles River Bridge* v. *Warren Bridge,* 11 Pet. 420. In the absence of limitations as to time, the termination of the franchise